

#163

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric
Regarding the Construction and Operation of a
Second 230 kV Circuit on the Existing
Transmission Line from Imperial Valley
Substation to the International Border to
Interconnect with the Comision Federal de
Electricidad, Baja California Norte System.

Application 01-09-007
(Filed September 4, 2001)

**OPINION GRANTING SAN DIEGO GAS & ELECTRIC COMPANY'S
REQUEST TO RELOCATE A PORTION OF ITS EXISTING
IMPERIAL VALLEY-LA ROSITA TRANSMISSION LINE**

Summary

This decision grants the request by San Diego Gas & Electric Company (SDG&E) to relocate six support structures along the existing Imperial Valley-La Rosita transmission line to accommodate two proposed merchant transmission line projects, provided that the relocation and any related costs will not be borne by ratepayers.

Procedural Background

On September 4, 2001, SDG&E filed and served a petition to modify D.83-10-004. The petition was subsequently converted to this application. By its application, SDG&E sought to modify the terms of the certificate of public convenience and necessity (CPCN) to construct the Imperial Valley-La Rosita transmission line approved by this Commission in Decision (D.) 83-10-004. On

December 11, 2001, the Commission adopted D.01-12-016 which modified the terms of the CPCN as requested.

In addition, SDG&E seeks approval to move the location of six support structures along the Imperial Valley-La Rosita transmission line to accommodate two proposed merchant transmission line projects. SDG&E requested expedited review of its application. Included with its application was a copy of the draft environmental assessment performed by the United States Department of Energy (DOE), in cooperation with the United States Department of the Interior (DOI) and the Bureau of Land Management (BLM).¹ DOE has since finalized its environmental assessment, and on December 10, 2001, SDG&E filed a copy of the final environmental assessment and appendices (DOE/EA-1391).

The assigned Administrative Law Judge (ALJ) issued a ruling on September 12, 2001, shortening the protest period for the application. No protests were filed, but two parties filed Responses to the Application, Save Southwest Riverside County (SSRC) and Coral Power, L.L.C. (Coral). SDG&E filed a reply to the responses. On December 17, 2001, InterGen Aztec Energy III, B.V. (InterGen) filed a response (InterGen Filing) to inquiries by the assigned ALJ. On December 18, 2001, Sempra Energy Resources (Resources) filed a response (Resources Filing) to inquiries by the assigned ALJ.

Relocation of Facilities

Although SDG&E's application does not focus on the relocation of its facilities in great detail, it is clear from the petition and associated environmental

¹ DOE, BLM, and DOI conducted an environmental review of the two merchant transmission projects. Relocation of the six SDG&E support structures was specifically included within the scope of environmental review.

documents, that the relocation is not required in order to add a second circuit to the Imperial Valley-La Rosita transmission line, but rather to accommodate the interconnection of two new merchant transmission projects. Baja California Power, Inc. (Baja)² and Resources³ are each proposing to construct double circuit 230 kV transmission lines to the United States-Mexico border in order to connect transmission and generating facilities in Mexico with the electricity grid in California. Part of the proposed projects includes relocating approximately six poles of SDG&E's existing Imperial Valley-La Rosita transmission line in order to facilitate an easier interconnection of the Baja and Resources transmission lines to the Imperial Valley Substation.

All of the generating units that will utilize the Baja or Resources transmission lines are located in Mexico and are being permitted under Mexican authorization. On October 18, 2001, the Federal Energy Regulatory Commission (FERC) found InterGen to be an Exempt Wholesale Generator (EWG) as defined in Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA). (InterGen Filing, Appendix A.) InterGen states that none of the facilities owned and operated by it or its affiliates will provide retail service to California. (InterGen Filing, p. 2.) InterGen asserts that because the Baja transmission line

² Baja will interconnect at the California-Mexico border with a transmission line owned by Energía de Baja California, S. de R.L. de C.V. (Energía). The Energía transmission line will connect to generators owned by Energía and Energía Azteca X, S. de R.L. de C.V. (Azteca). Baja, Energía, and Azteca are subsidiaries of InterGen.

³ Resources will interconnect at the California-Mexico border with a transmission line owned by Termoeléctrica de Mexicali (Termoeléctrica). Termoeléctrica also owns the generators that will interconnect with the transmission line. Resources and Termoeléctrica are wholly owned, indirect subsidiaries of Sempra Energy Global Enterprises, which is wholly owned by Sempra Energy (Sempra). SDG&E is also a subsidiary of Sempra.

will be used solely to deliver electricity from its affiliated wholesale plants in Mexico, the Baja line is an eligible facility under PUHCA. Like InterGen, Resources states that its facilities and those of Termoeléctrica will not provide retail service. (Resources Filing, p. 3.) Resources has not yet sought EWG status but states that given the similarity of facts between its project and Baja, it believes that FERC will similarly grant it EWG status. Like InterGen, Resources asserts that its transmission line is an eligible facility under PUHCA. Both InterGen and Resources assert that Pub. Util. Code § 1001 is not applicable to their California projects because Pub. Util. Code § 216(g) exempts owners of EWG facilities from the obligation to obtain a CPCN.

Authority to construct the two proposed transmission lines is subject to approval of a Presidential Permit by DOE.⁴ The planned project route for both the Baja and Resources transmission lines lie entirely within land managed by BLM. DOE is conducting environmental review of the two projects as the lead agency under the National Environmental Policy Act of 1969 (NEPA), with BLM and DOI operating as cooperating agencies. As part of the review, DOE, BLM, and DOI have studied the environmental impacts of relocation of SDG&E's transmission facilities.

Construction of the merchant transmission projects and the related relocation of SDG&E's facilities were reviewed under the DOE's authority established in Executive Order No. 10485, and amended by Executive Order No. 12038, and 10 CFR § 205.320 et seq. (2000). Environmental review of the

⁴ A Presidential Permit is required for a company in the United States to connect an electrical transmission line with a transmission line from Mexico at the United States border.

project is conducted in accordance with NEPA as codified at 10 CFR § 1021. In order to grant a Presidential Permit, DOE must determine if a proposed project is consistent with the public interest by assessing the environmental impacts and the impacts of the project on the operating reliability of the United States electric supply system.

State and local agencies are encouraged to use NEPA documents if the NEPA process is proceeding more quickly than CEQA review and the process complies with CEQA. (CEQA Guidelines § 15221.) In this case, DOE adopted a Finding of No Significant Impact (FONSI) for the project on December 5, 2001.⁵ The Environmental Assessment upon which the FONSI is based describes the mitigation measures that are conditions of the project in Section 2.2.6. No additional circulation of the FONSI is required because on September 10, 2001, the Commission notified the Office of Planning and Research that it intended to use the federal document in place of preparing a separate state document consistent with CEQA Guidelines § 15225.

DOE has concluded that construction of one or both merchant transmission lines “would not constitute a major Federal action significantly affecting the quality of the human environment” (FONSI, p. 3.)

DOE specifically found that:

“Mitigation measures committed to by the applicants are designed to protect biological, cultural, and paleontological resources. Impacts requiring mitigation on land use; air quality; geology, soils, and seismicity; visual resources; paleontological resources; and socioeconomics are not anticipated. The proposed project would not

⁵ A FONSI is similar to a negative declaration under the California Environmental Quality Act (CEQA).

result in: irreversible or irretrievable commitments of resources, short-term benefits at the expense of long-term environmental degradation, or conflict with the intent of any Executive Orders relative to NEPA compliance.” (Environmental Assessment, December 2001, p. 124.)

SDG&E’s application addressed assignment of costs associated with relocation of its facilities in order to facilitate interconnection of two merchant transmission and generation projects. In addition, there may be additional environmental mitigation costs required as a result of the relocation of facilities. SDG&E has clarified that any costs associated with relocation of SDG&E facilities, be they planning, engineering, design, construction, or mitigation related, shall not be borne by SDG&E ratepayers.

Discussion

The question before us is whether to allow SDG&E to relocate six transmission support structures to accommodate two proposed merchant transmission projects. Because DOE, BLM, and DOI have conducted an environmental review of the relocation of SDG&E’s transmission facilities that meets the requirements of CEQA, there is no need for the Commission to conduct a separate review. Additionally, no one in this proceeding raises any environmental concerns and we have not discovered any.⁶

⁶ We note that it is likely that construction will occur during the active period of the flat-tailed horned lizard, a BLM sensitive species and a California Department of Fish and Game species of special concern. This species may also be considered for listing as a threatened or endangered species by the United States Fish and Wildlife Service. When construction occurs, SDG&E must adhere to the mitigation measures adopted by DOE in the Appendices to the Environmental Assessment, December 2001, Appendix C, pp. 36-40. Additional measures apply if construction occurs during the lizard’s active period as spelled out on pp. 39-40 of Appendix C.

SDG&E states that relocation of its existing transmission facilities will facilitate the installation of additional transmission capacity to serve the state. Coral supports relocation of the SDG&E facilities to accommodate construction and interconnection of the two merchant transmission lines. Coral believes that direct connection of the generators in northern Mexico to California's grid is necessary to allow additional power to flow to California. Coral points out that, even with the addition of the second circuit to the existing SDG&E transmission line authorized in D.01-12-016, not all of the planned generation in northern Mexico can be served by SDG&E's system. Coral argues that the Commission should not prejudice the allocation of relocation costs at this time.

Baja and Resources plan to construct merchant transmission lines in order to transmit electricity generated in Mexico to United States markets. Selling and transmitting power to retail customers would normally make Baja and Resources electrical corporations pursuant to Pub. Util. Code § 218 and public utilities pursuant to Pub. Util. Code § 216. Neither Baja nor Resources will engage in retail sales. In addition, InterGen was deemed an EWG by FERC pursuant to 15 U.S.C. § 79z-5a(a)(2)(B) and Resources expects to receive the same designation. This statute specifically defines eligible facilities to include "interconnecting transmission facilities necessary to effect a sale of electric energy at wholesale." And thus Baja is also an EWG. Although Resources has not applied for EWG status as of yet, its project is extremely similar to that of Baja and thus we agree that it is likely also to be granted EWG status. 15 U.S.C. § 79z-5a(e) states that an EWG is not to be considered an electric utility company under the chapter.⁷ Thus

⁷ In addition, Pub. Util. Code § 216(g) makes clear that ownership or operation of a certified EWG does not inherently make such corporation a public utility under state law.

Baja and Resources are not public utilities as a result of their ownership of these transmission lines and are not required to obtain a CPCN from the Commission under Pub. Util. Code § 1001 prior to beginning construction of their projects. This finding is specific to the set of facts surrounding these two wholesale transmission projects.

Because SDG&E and Resources are part of the same parent company, we must also assess whether relocation of the existing transmission support structures causes any affiliate transaction issues. We look first to our affiliate transaction rules as set forth in D.97-12-088, as modified by D.98-08-035 and other decisions under Rulemaking 97-04-011/Investigation 97-04-012 for applicability. For purposes of the affiliate transaction rules, Resources, Termoeléctrica, and Sempra are all defined as affiliates of SDG&E (Rule 1.A.).

Rule III of the affiliate transaction rules requires that utilities shall not provide preferential treatment for affiliates. In this case, SDG&E has proposed to relocate six existing transmission support structures to facilitate the interconnection of two entities, one affiliated and one unaffiliated. The relocation costs will be borne entirely by those requesting the relocation as is common procedure when utility facilities are relocated at the request of a non-utility entity. Actual interconnection agreements between SDG&E and Resources and Baja will be developed consistent with federal requirements for interconnection. Any congestion that occurs, which may limit power flows into SDG&E's Imperial Valley Substation, would be managed by the California Independent System Operator. Thus, any preferential treatment that might occur would be pursuant to FERC requirement and allowed under Rule III.A. Therefore, we find that the proposed transmission facility relocation does not present any apparent conflicts with the affiliate transaction rules. However, we will explicitly require as a condition of relocation, that SDG&E provide no

preferential treatment of Resources, Termoeléctrica, or Sempra power flows facilitated by the relocation of existing facilities unless required by FERC as part of an approved congestion management plan.

DOE, BLM, and DOI have studied the environmental impacts of relocation and conclude that no unavoidable adverse impacts on the environment will occur. SDG&E's ratepayers will not bear the cost of the relocation project as described by SDG&E. SDG&E should be authorized to relocate six support structures along the existing Imperial Valley-La Rosita transmission line because it facilitates interconnection of additional transmission facilities, will have no cost to ratepayers, and has limited impact to the environment.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. InterGen is certified as an EWG.
2. Baja falls within the definition of an eligible facility of an EWG.
3. Resources has not applied for certification as an EWG.
4. Neither Baja nor Resources will engage in retail sales.
5. On December 5, 2001, DOE issued a FONSI for the merchant transmission projects of Baja and Resources.
6. Resources, Termoeléctrica, and Sempra are affiliates of SDG&E under the Commission's affiliate transaction rules.
7. Relocation of SDG&E's existing transmission facilities will facilitate the installation of additional wholesale transmission capacity to serve the state.

Conclusions of Law

1. Resources is likely to be granted EWG status because of its similarities to Baja.
2. The Baja and Resources merchant transmission projects are not required to obtain a CPCN under Pub. Util. Code § 1001.
3. State and local agencies are encouraged to use NEPA documents if the NEPA process is proceeding more quickly than CEQA review and the process complies with CEQA.
4. The FONSI meets the requirements of the CEQA Guidelines.
5. Because DOE, BLM, and DOI have conducted an environmental review of the relocation of SDG&E's transmission facilities, and that review meets the requirements of CEQA, there is no need for the Commission to conduct a separate review.
6. No unavoidable adverse impacts on the environment will occur as a result of relocation of the six support structures from the existing Imperial Valley-La Rosita transmission line.
7. Any costs associated with relocation of SDG&E facilities as described in this application, be they planning, engineering, design, construction, or mitigation related, should not be borne by SDG&E ratepayers.
8. Relocation of six transmission support structures does not present any apparent conflicts with the affiliate transaction rules.
9. SDG&E should not provide preferential treatment of Resources, Termoeléctrica, or Sempra power flows facilitated by the relocation of existing facilities unless required by FERC as part of an approved congestion management plan.
10. SDG&E should be authorized to relocate six support structures along the existing Imperial Valley-La Rosita transmission line because it facilitates

interconnection of additional wholesale transmission facilities, will have no cost to ratepayers, and has limited impact to the environment.

11. This order should be effective today in order to allow the pole relocation to take place expeditiously.

O R D E R

IT IS ORDERED that:

1. San Diego Gas & Electric Company (SDG&E) is authorized to relocate six support structures along the existing Imperial Valley-La Rosita transmission.

2. Any costs associated with relocation of SDG&E facilities as described in this application, be they planning, engineering, design, construction, or mitigation related, shall not be borne by SDG&E ratepayers.

3. SDG&E shall not provide preferential treatment of Sempra Energy Resources, Termoeléctrica de Mexicali, or Sempra Energy power flows facilitated by the relocation of the six support structures unless required by the Federal Energy Regulatory Commission as part of an approved congestion management plan.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.